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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,320	10/28/2003	Jerry J. Fielding JR.	4889-000001	4849
27572	7590	04/07/2004	EXAMINER	
HARNESSE, DICKEY & PIERCE, P.L.C.			MILLER, BENA B	
P.O. BOX 828			ART UNIT	
BLOOMFIELD HILLS, MI 48303			PAPER NUMBER	

3712

DATE MAILED: 04/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/695,320	Applicant(s) FIELDING, JERRY J.	
	Examiner Bena Miller	Art Unit 3712	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the inflatable bladder and the motor must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The drawings are objected to under 37 CFR 1.83(a) because they fail to show inflatable bladder and motor as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The specification fails to provide proper antecedent basis for the limitation "inflatable bladder" and "a motor for propelling the toy".

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 5, 6, 15 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Lorenzo.

Lorenzo teaches in the figures a submersible water toy comprising a main body (10), an upper deck surface (fig.1) and the main body portion operable to support the user's weight (col. 4, par. 2).

Regarding claim 2, Lorenzo further teaches a foam main body (col. 3, lines 45-47).

Regarding claim 5, Lorenzo further teaches a pair of convexly curved surfaces (fig.2).

Regarding claim 6, Lorenzo further teaches a generally planer central portion and front and rear ends which angle upwardly (fig.2).

Regarding claim 15, Lorenzo further teaches a substantially flat central portion (fig.1).

Regarding claim 16, Lorenzo further teaches the central portion having a length substantially greater than a width (The examiner takes the position that the central portion of Lorenzo has a length substantially greater than a width).

Claims 1, 11, 12 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Milford.

Milford teaches in the figures a submersible water toy comprising a main body (10), an upper deck surface (fig.2) and the main body portion operable to support the user's weight (fig.1).

Regarding claim 11, Milford further teaches a disk-shaped main body (10).

Regarding claim 12, Milford further teaches the upper deck is concave (fig.6).

Regarding claim 17, Milford teaches in the figures the method of providing (10), submersing (fig.1), positioning (fig.1) and supporting (fig.1).

Claims 1 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Hashimoto.

Hashimoto teaches in the figures a submersible water toy comprising a main body (fig.1), an upper deck surface (fig.1) and the main body portion operable to support the user's weight (col. 4, line 56).

Regarding claim 13, Hashimoto further teaches an inflatable bladder (col. 2, line 34).

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Jang.

Jang teaches in the figures a submersible water toy comprising a main body (fig.1), an upper deck surface (fig.1) and the main body portion operable to support the user's weight (col. 1, lines 18-26).

Regarding claims 2 and 3, Jang further teaches a expandable polystyrene foam main body (col. 1, line 46).

Claims 1 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Johnson III.

Johnson III teaches in the figures a submersible water toy comprising a main body (fig.1), an upper deck surface (fig.1) and the main body portion operable to support the user's weight (11).

Regarding claim 8, Johnson III further teaches a plastic shell substantially surrounding the foam core (col. 3, lines 10-19).

Claims 1 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Moran.

Moran teaches in the figures a submersible water toy comprising a main body (12), an upper deck surface (fig.1) and the main body portion operable to support the user's weight (fig.1).

Regarding claim 9, Moran further teaches a plurality of buoyant panels (34, 36; col. 3, par.2).

Claims 1 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Gleason.

Gleason teaches in the figures a submersible water toy comprising a main body (fig. 1), an upper deck surface (fig.1) and the main body portion operable to support the user's weight (col. 1, lines 5-24).

Regarding claim 14, Gleason further teaches a motor (16) for propelling the toy.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lorenzo.

Lorenzo teaches in figures most of the elements of the claimed invention except for the main body portion having a length of approximately 31 inches, a width of approximately 8 inches and a thickness of approximately 2 inches. It would have been considered a mere design choice to have the main body portion of Lorenzo having a length of approximately 31 inches, a width of approximately 8 inches and a thickness of approximately 2 inches for the purpose of supporting the weight of the user.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jang.

Jang teaches in figures most of the elements of the claimed invention except for the main body portion constructed of ethylene vinyl acetate. It would have been considered a mere design choice to have the main body portion of Jang to be constructed of ethylene vinyl acetate for the purpose of supporting the weight of the user.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moran.

Moran teaches in figures most of the elements of the claimed invention except for the buoyant panels are removably secured to the main body portion with elastic bands.

It would have been considered a mere design choice to have the buoyant panels removably secured to the main body of Moran for the purpose of supporting the weight of the user.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Derrah teaches a radio controlled surfboard with robot.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bena Miller whose telephone number is 703.305.0643. The examiner can normally be reached on Monday-Friday.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Bena Miller  
Examiner  
Art Unit 3712

bbm 2004  
April 04, 2004